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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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March 1, 2010

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201


Dear Madam Secretary:

Thank you for appearing before the Committee on Energy and Commerce on February 4, 2010, at the hearing regarding the President's Fiscal Year 2011 Budget for the Department of Health and Human Services.

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions.

Please provide your responses by March 17, 2010, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to [Earley.Green@mail.house.gov](mailto:Earley.Green@mail.house.gov). Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman  
Chairman

Attachment

**The Honorable Mary Bono Mack**

I wanted to first thank you for your commitment at the hearing on the 4<sup>th</sup> to bring together the HHS Inspector General and Administration for Children and Families to examine the use of Federal funds by a tribal TANF program operating in southern California. Below are further questions that may help to guide your internal review and help Congress to better understand the situation.

1. The Torres Martinez Tribal TANF program receives its annual federal award of more than \$20 million based on an estimated monthly caseload of 5,238 families. This caseload number was apparently set by both federal law (which calls for basing it on a formula using 1994 AFDC figures) and the tribe's contention to ACF that Native Americans were undercounted in Riverside and Los Angeles counties.

Yet in 2007, six years into the Torres-Martinez program, it was serving fewer than 400 families per month -- 7 percent of its initial projections. Despite this, the Torres-Martinez program's federal award was unchanged, and the program also received about \$15 million a year in grants from the state of California based on the federal caseload formula.

Today, the Torres-Martinez program's caseload is still only about one-fourth of what was projected when its program was formulated.

- a. Why has there been no examination of whether to reduce the Torres-Martinez program's annual award, given its far lower caseloads?

The caseload used to establish the amount of Federal funds for this grant was based on the State-reported FY 1994 AFDC caseload and expenditure data, adjusted in negotiations between the State and Tribe and agreed to by both parties. This caseload is not an "estimated monthly caseload" in the sense of being a minimum requirement, projection, or target number of cases to be served. The amount of State maintenance of effort (MOE) funds provided is determined solely by the State and is not fixed to any Federal formula.

In the same manner that the Federal funds received by a State, also set at the FY 1994 level, have not been reduced in spite of the dramatically reduced caseloads being served, once Tribal TANF block grant awards are established they are not adjusted based on current program caseload levels.

- b. Has there been a consideration by ACF of whether the Torres-Martinez, a tribe of about 400 members whose reservation is in a remote part of the Southern California desert, should no longer operate a program in urban Los Angeles County, the nation's most populous county by far, some 130 miles away from the tribe's

**reservation? Especially given the program's failure to increase its participation rates to expected levels over the course of nearly a decade? Why or why not?**

We have been working to help the Tribe develop an approach to expand services throughout its service area in a prudent manner. This has been done with consideration of the ability of needy families within the Tribe's target population in Los Angeles to continue receiving services from Los Angeles County until such time as critical program and financial deficiencies were addressed and program expansion could proceed in a well planned manner.

- c. Has there been an examination by ACF of whether the Torres-Martinez program is failing in its mission, given that nearly a decade into the program, it is reaching far fewer Native American families than anticipated? Why or why not?**

Although the base caseloads were derived in conformity with the statute and regulations for identifying funding levels for tribes, as previously noted, the historical FY 1994 caseload and expenditure data are not viewed as a minimum required or target level for families to be served. One key consideration under TANF has been the extent to which States and Tribes could use these funds to address underlying barriers to self-sufficiency and to provide work supports, as opposed to only providing cash support to needy families. ACF has worked with the Tribe to promote a range of supportive/barrier removal/family preservation services designed to achieve the Tribe's own goals for promoting the well being of the children and families they serve. The Tribe indicates that it has expanded beyond the cash assistance caseload to a larger population for whom supportive/barrier removal/family preservation services have been made available. We anticipate a similar approach in Los Angeles County. The Tribe has been responsive, at both the TANF program level and the Tribal Council level, in providing information on current and planned program activities and enhanced internal oversight mechanisms.

- 2. ACF imposed a more than \$1.5 million penalty on the Torres-Martinez tribe for misuse of TANF funds in fiscal years 2002 and 2003. The 2002 portion of the penalty -- \$625,380 -- was to be paid in escalating quarterly installments commencing in September 2006 and concluding on Sept. 30, 2009. The 2003 portion of the penalty -- \$912,500 -- was to be paid in escalating quarterly installments starting in March 2008 and paid in full by Dec. 21, 2011.**

**In an Aug. 12, 2009, letter to ACF Director of Office of Family Assistance Sidonie Squier, Torres-Martinez Tribal Chairwoman Mary L. Resvaloso said the tribe had "diligently made payments, in good faith, for a total of \$250,000 to date."**

**But according to ACF spokesman Kenneth Wolfe, the tribe has made a total of one payment for both penalties, for \$275,000, on Sept. 22, 2009 — more than a month after Resvaloso's letter, and three years after payments were supposed to start.**

- a. According to Wolfe, ACF agreed to reduce payments required of the Torres-Martinez on the penalty following a January 2008 letter from tribal officials citing financial hardship. The payments were reduced to \$25,000 per quarter to cover both the 2002 and 2003 misuse of TANF funds penalties. But the tribe never made even the reduced payments.**

TANF penalty regulations require that the Tribe repay its penalties by substituting its own funds to cover expenditures that it would have made with Federal TANF funds. Based on instructions from ACF, the Tribe was depositing its own funds to its TANF grant account, and they were available for use. However, the Tribe did not have sufficient expenditures to offset the TANF penalty amount. Therefore, ACF requested that the Tribe forward the funds it had set aside to the HHS Program Support Center. This is the payment made in September 2009. In early March, Torres Martinez sent an additional \$75,000; they are up-to-date on their reduced quarterly installment plan for the 2002 penalty and \$50,000 in arrears on the 2003 penalty.

- b. Why did ACF not take action when the tribe for years was not paying its penalty payments? This appears to have been the only imposition on the tribe for misspending at least \$1.5 million in taxpayer funds intended to help the needy, but it was no imposition at all, in that the tribe was at no time paying the penalty.**

Please see the answer above. The Tribe had deposited its own funds, as required by ACF, into its TANF fund.

- c. What actions can ACF consider if the penalty payments continue to be unpaid? And is the agency considering them?**

The total penalty amount for FY 2002 and FY 2003 was \$1,543,888 (\$625,388 for FY 2002 plus \$912,500 for FY 2003); to date, the Tribe has paid back \$350,000. The Tribal TANF regulations provide that should the Tribe fail to make the penalty payments, additional penalties may be applied and the annual grant award reduced.

Recently, the Tribe, as permitted by the Tribal TANF regulations, requested that ACF consider reducing the Tribe's current annual Tribal Family Assistance Grant

(TFAG) for FY 2010 by the total balance due, plus an additional two percent penalty to be applied to the total TFAG for FY 2010. The total balance due is \$1,589,064. This amount is based on the following calculation: \$1,537,888 (the full penalty amount for FY 2002 and FY 2003) minus \$350,000 (the amount paid directly by the Tribe) plus \$401,176 (the amount of the additional penalty of two percent). ACF has accepted the request and the balance due will be taken from the Tribe's TFAG for the two remaining quarters of FY 2010.

3. Tribal officials, and to some extent California and federal officials, have indicated the Torres-Martinez Tribal TANF program's problems are largely problems of the past. That the tribe has made progress in its areas of deficiency in recent years, particularly because new management and professional staff was put in place. But the tribe continues to have material weakness findings in every annual audit.

And a review by The Desert Sun of auditors' findings year to year seems to show the same major problems recurring and many of the same promises by tribal officials that fixes were in place or on the way. (See here: <http://www.mydesert.com/article/20100117/NEWS06/1160359/TANF+Timeline++Promises+made++yet+problems+persisted> )

- a. What actions did ACF take when the same major problems were occurring in the Torres-Martinez Tribal TANF program every year, including an inability to reliably track how the program spent and disbursed money, and whether it was following federal laws, rules and guidelines? Do you believe those actions were sufficient?

ACF has engaged in on-site program and financial oversight and meets periodically with the Tribe in the Regional Office to follow-up on outstanding program and financial issues. We believe that these efforts have facilitated significant progress by the Tribe in administration of the program and ensuring compliance with pertinent laws and regulations.

4. HHS's National External Audit Review Center issued alerts against the Torres-Martinez tribe every year from 2002 through at least 2006. The alerts detailed the significant findings of financial accountability problems within the tribe's TANF program. HHS's Office of Inspector General was carbon copied on each of those "NEAR Alerts."

- a. What actions were taken by ACF, by HHS and by the Office of Inspector General in particular as a result of these alerts year after year?

Torres Martinez has submitted audits to the National External Audit Review Center (NEARC) that cover its operations through September 30, 2008. NEARC is a component of the Office of Inspector General (OIG). Through NEARC, OIG reviewed the 2002 through 2006 independent audit reports on the Torres-Martinez Tribal TANF program and referred to ACF the audit reports along with alerts describing the independent auditors' findings of internal control weaknesses. These alerts were also forwarded to OIG's Office of Investigations. Referral to the grant-making agency is OIG's typical practice, as the responsibility for imposing corrective action in response to single audit findings lies with the grant-making agency. OIG also referred to ACF information on allegations of misuse of grant funds by the Torres-Martinez Tribal program that OIG had received in 2003. ACF has worked with the Tribe to ensure it develops appropriate corrective action plans in response to the audit findings. Because of the Tribe's difficulty in retaining a stable management team, corrective actions have not always been implemented timely. The 2008 audit shows that a number of previous problems have been resolved.

**b. Why did the Office of Inspector General never do its own investigation of the Torres-Martinez Tribal TANF program, particularly after the most serious findings of mismanagement and waste in the 2002 and 2003 audits? What does OIG investigate if not this?**

The HHS Office of Inspector General (OIG) reviewed the 2002 and 2003 independent audit reports on the Torres-Martinez Tribal TANF program, and our National External Audit Review Clearinghouse (NEARC) referred to ACF the audit reports along with an alert describing the independent auditors' findings of internal control weaknesses. This is NEARC's typical practice, as the responsibility for imposing corrective action in response to single audit findings lies with the grant-making agency, i.e., ACF in this case. NEARC also referred to ACF information on allegations of misuse of grant funds by the Torres-Martinez Tribal program that OIG had received in 2003. OIG's understanding is that ACF imposed a corrective action plan on the program to address the internal control weaknesses. NEARC recently received a single audit report on the Torres-Martinez Tribal TANF program for 2008, and we are currently reviewing this report.

5. A 2002 draft audit by the Torres-Martinez's auditor, The Sells Group, stated, "An HHS 'auditor' from San Francisco conducted on-site visits, apparently without looking at documentation, and applauded everything he was told. But if he had looked at the substance rather than the form, he should have been more critical ... management was directly involved in putting a positive spin on very high-risk behaviors, and the consultants responded to that by playing down the risks and playing up the accomplishments."

**This account seems supported by an e-mailed shared with The Desert Sun by former Torres-Martinez TANF program executive director Virginia Hill. The e-mail, dated Jan. 23, 2003, shows it sent to Hill by James Henry, then a tribal program specialist for Administration for Children and Families' San Francisco office.**

**The e-mail discussed Henry's on-site visit to the Torres-Martinez tribal welfare program in 2002. (Bolding added.)**

**"Since there are no official or unofficial review tools, the trip report is the format we currently use," Henry stated.**

**"It was a good opportunity to see what the program has been doing and the benefits being provided to native communities ... Based on my initial visit, the program is progressing well."**

**a. Are there still "no official or unofficial review tools" of Tribal TANF programs by ACF?**

Tribal TANF, like State TANF, is a block grant that is governed by title IV-A of the Social Security Act. The single audit is the primary mechanism that we have under the law to monitor State and Tribal TANF operations.

The single audit is generally conducted by a private audit firm hired by the Tribal TANF grantee. The audit firm looks at a myriad of administrative, program, and financial operations to ensure that the Tribal TANF grantee is operating in compliance with the Social Security Act, the implementing regulations at 45 CFR Part 286, the approved TTANF plan, and the appropriate financial management regulatory provisions at 2 CFR and 45 CFR Part 92.

In addition, the single audit mechanism has been supplemented with onsite program and financial reviews conducted by our Regional Office staff. These onsite reviews also provide technical assistance to our Tribal TANF grantees when problems or operational deficiencies are brought to our attention.

**b. How does ACF review and determine the effectiveness of Tribal TANF programs?**

In addition to the methods listed in the previous answer, the program also submits monthly work participation reports on a quarterly basis and quarterly financial reports.

**c. Under the criteria cited in b. , is the Torres-Martinez Tribal TANF program effective? Why or why not?**

Under the TANF statute, HHS does not have general authority to determine “effectiveness” of efforts by States and Tribes. Rather, HHS’ authority is limited to determining whether States or Tribes are subject to penalties for specified violations, like failure to meet the work participation rate. When a state or tribe fails to achieve applicable participation rate targets, a penalty may be imposed. The Tribe has not been assessed any such penalties. The Tribe failed to achieve its negotiated participation rates in FY 2004. However, as provided in the regulations, the Tribe submitted a corrective compliance plan and achieved its required rates in FY 2005. As noted earlier, ACF has also worked with the Tribe to promote a range of supportive services designed to achieve the Tribe’s own goals for promoting the well being of the children and families they serve.

6. **The Desert Sun reviewed the Form SF-SAC reports for Tribal TANF programs nationwide, through the Federal Audit Clearinghouse. Forty-four of the 52 programs nationwide had forms where TANF grants were discernable. Of those, more than one-third of programs had either significant deficiencies, material weaknesses or both in each of their past three audits. Nearly half of the programs nationwide had such audit findings in at least two of the past three years.**

- a. **Does this indicate to ACF that there may be a more systemic problem going on? Is there a need for more federal involvement with tribes to ensure their financial accountability with taxpayer funds?**

Section 409(a)(1) of the Social Security Act, which was amended with the enactment of welfare reform in 1996, requires the audit process to be used as our primary oversight vehicle for the various TANF programs operated by States, DC, Guam, Puerto Rico, the Virgin Islands, federally recognized Indian Tribes and Alaska Native organizations. The audit process along with the TANF penalty process (which is also contained in Section 409) provides for the resolution of adverse audit findings with an emphasis on the implementation of corrective actions to remedy any identified operating deficiencies. The correction of these deficiencies is a worthwhile goal and the Tribal TANF grantees that follow our audit compliance supplement have been responsive to this process. Moreover, these Tribal TANF grantees are sensitive to adverse audit findings and routinely ask for technical assistance in order to implement and operate efficient and effective systems. In fact we have established mechanisms that provide technical assistance to our Tribal TANF grantees and we intend to continue in this important initiative.